absolute promise by C to pay B's debt, which was the case in *Williams* v. *Leper*.

One reason why the courts have shown a disposition to take out of the Statute of Frauds promises made upon a new consideration inuring to the promisor's benefit is probably that where there is a new transaction, a bargain made and consideration given, there is less danger of the frauds which the statute was designed to prevent. But when the promise is one of suretyship, it is so plainly within the words of the statute that it cannot be taken out merely because it is not within the spirit.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMIRALTY — CONTRIBUTORY NEGLIGENCE — DIVISION OF DAMAGES. — A longshoreman while loading a vessel was injured, partly through his own negligence, partly through the negligence of the vessel. *Held*, in spite of his contributory negligence, he can recover for part of the damage. Courts of admiralty act upon "enlarged principles of justice, and are not bound by the positive boundaries of mere municipal law."

This case is the first in which this exact point had been presented to the Supreme Court, but the doctrine of divided damages had already been extended by that court to claims other than those for damages to the vessels which were in fault in a collision. *The Max Morris* v. *Curry*, 11 Sup. Ct. Rep. 29.

BILLS AND NOTES — ANOMALOUS INDORSER. — An inland bill of exchange was indorsed by a third person before its delivery to give the bank the security of an additional name. The indorser intended to assume the liabilities of an indorser only, while the bank intended to hold him as a surety; but there was no agreement on the point. *Held*, that in the absence of agreement he was liable as an indorser only and must have notice, and what the bank intended was immaterial. *De Pauw* v. *Bank of Salem*, 25 N. E. Rep. 705 (Ind.).

BILLS AND NOTES — DOMICILED NOTE. — If a depositor makes a note payable at his bank and the bank pays it, the bank is entitled to set off the note in an action brought by the depositor for the balance due him; but *semble* the bank is not liable to the depositor for a failure to pay such a note. *Bedford Bank* v. *Acoam*, 25 N. E. Rep. 713 (Ind.).

CONFLICT OF LAWS — POWER OF ATTORNEY. — Where an authority is given in a foreign country to an agent to transact business for his principal in other countries, it must be construed, in the absence of evidence of a contrary intention, according to the law of the place where the business is to be transacted. *In re Brazilian Telegraph Co.*, 39 W. R. 65 (Eng.).

CONSTITUTIONAL LAW. — The term "grand jury" had a well-understood meaning when the declaration of rights in the Constitution of North Carolina was adopted, and one of its most essential features was that the concurrence of at least twelve of its members was necessary to the finding of an indictment. Therefore where the Constitution provides that a "criminal indictment must be found by a grand jury," an act of the Legislature making the concurrence of nine members sufficient is unconstitutional. *State* v. *Barker*, 12 S. E. Rep. 115 (N. C.).

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — SPECIAL APPEARANCE. — Texas statutes provide that a special appearance by a non-resident defendant for the purpose of pleading to the jurisdiction is a voluntary appearance which brings defendant into court for all purposes. *Held*, the statutes are valid. They do not deprive a person of life, liberty, or property without due process of law.

The fourteenth amendment of the Constitution of the United States does not give the defendant an inviolable right to have the question of the sufficiency of the service decided by the court in the first instance and alone. *York* v. *State of Texas*, 11 Sup. Ct. Rep. 9.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — DELEGATION OF POWER TO REGULATE. — The act of Congress, 1890, known as the "Wilson Bill," does not delegate to the States the power to regulate interstate commerce. Congress, in the exercise of the constitutional power to regulate foreign and interstate commerce, has declared the time when such imported property (intoxicating liquors) shall become subject to State laws. At some time imported property must lose the character of an article of interstate commerce, and become subject to State laws; and it is for Congress, which possesses the power to regulate commerce, to define the time or event which shall have the effect of subjecting importations to State control, and this is what is done by the "Wilson Bill" in regard to intoxicating liquors. *In re Spickler*, 43 Fed. Rep. 653, 657.

CONSTITUTIONAL LAW — SUIT TO QUESTION VALIDITY OF ELECTION. — A tax-payer may contest by equitable proceedings the validity of an election by which his interests are affected. The Statute of Limitations does not run against this right, but the action must be brought within a reasonable time after the election, and before the rights of innocent third persons have accrued under the action of the authorities in pursuance of the result of the election. *Jones* v. *Commissioners*, 12 S. E. Rep. 69 (N. C.).

CONTRACTS — ILLEGAL CONSIDERATION — AGREEMENT TO STIFLE PROSECUTION. — The plaintiffs, a local board, brought an indictment against the defendants for obstructing a public road, but later agreed to consent to a verdict of "not guilty" if defendants would restore the road. The defendants did not restore the road. *Held* (following *Keir* v. *Leemen*, 9 Q. B. 371), that the contract was void. An agreement to stifle a prosecution for a public injury is none the less void because the consideration is a public benefit and the accomplishment of the object of the prosecution, since nevertheless the administration of justice is taken from the judiciary. *Windhill Local Board* v. *Vint*, 45 Ch. Div. 351 (Eng.).

CRIMINAL LAW — ATTEMPT TO COMMIT LARCENY. — A person who puts his hand into the pocket of another to steal whatever may be in it is guilty of an attempt to commit larceny, though the commission of the crime was impossible because the pocket was empty. *People* v. *Moran*, 25 N. E. Rep. 412 (N. Y.). This point can now be considered finally settled in this country. The opinion of the General Term of the Supreme Court, which this case overrules, said all that could be said for the contrary doctrine. It is doubtful whether that doctrine would prevail even in England now; see *Reg.* v. *Brown*, 38 W. R. 95.

CRIMINAL LAW — FORMER CONVICTION. — *Held*, a conviction for *simple* larceny in a recorder's court is a bar to a subsequent prosecution in the city court for the taking of the same property, on the same occasion, from a dwelling-house, though the recorder's court did not have jurisdiction in a case of larceny from a dwelling-house. *Powell* v. *State*, 8 So. Rep. 108 (Ala.).

EQUITY JURISDICTION — REFORMATION OF DEEDS — VOLUNTARY TRUST. — The possession of certain land was given to a trustee for the benefit of the grantor's imbecile daughter. A deed was also executed and delivered, but through an error in description it did not cover the property of the grantor. *Held*, nevertheless, that equity could reform the deed although the conveyance was voluntary, for it constituted an executed trust. *Lynn* v. *Lynn*, 25 N. E. Rep. 635 (Ill.).

EVIDENCE — RELEVANCY. — Testimony that the plaintiff's attorney has taken the case on a contingent fee is not admissible. *Stearns* v. *Reidy*, 25 N. E. Rep. 762 (Ill.).

INSURANCE — CONDITIONS. — A provision in a fire-insurance policy that the company shall not be liable "for loss in case of fire happening by any insurrection . . . nor explosions of any kind whatever within the premises, nor by concussions merely," does not exempt the company from liability for loss caused by the explosion of a lamp. *Heffron* v. *Kittanning Ins. Co.*, 20 Atl. Rep. 698 (Pa.).

INSURANCE — DEATH BY DISEASE. — Death resulting from a malignant pustule

caused by the infliction upon the body of putrid animal matter containing poisonous "*bacillus anthrax*" is death from disease, and not from accident, within the terms of an accident policy. Ruger, C. J., and O'Brien, J., dissenting. *Bacon* v. *Mutual Accident Association*, 25 N. E. Rep. 399 (N. Y.).

INSURANCE — LACHES OF ASSIGNEE. — A life-insurance policy was assigned to W., who later reassigned a part of it to the insured. Both assignments were so attached that they could be easily removed. The insured detached the assignments and surrendered the old policy to the company, procuring instead a paid-up policy, which he assigned to a purchaser for value, without notice of the previous assignments. *Held*, that W. was guilty of such laches that he could not take advantage of the priority of his assignment. *Bridge* v. *Wheeler*, 25 N. E. Rep. 612 (Mass.).

JUDGMENT — SATISFACTION. — Property is levied on and sold by direction of the execution creditor who purchases it for the amount of his judgment with notice that it does not belong to the execution debtor. *Held*, that such purchase is a satisfaction of the judgment though the debtor had no title or interest whatever in the property, and the purchaser (the execution creditor) refuses to accept it. The doctrine of *caveat emptor* is strictly applied, and the purchaser operates as an irrevocable satisfaction of the judgment. *Thomas* v. *Glazener*, 8 So. Rep. 153 (Ala.).

LIBEL — CORPORATIONS — CHARGE OF CORRUPTION. — A corporation cannot maintain an action for libel in respect of an imputation of corruption, for it cannot be guilty of corruption, although the individuals composing it may. *Mayor, etc., of Manchester* v. *Williams*, 4 Jurist, 191 (Eng.).

MUNICIPAL CORPORATIONS — DELEGATION OF POWER. — The power to make certain regulations in regard to contagious diseases was delegated to an executive committee, who appointed local sub-committees. In the absence of any regulations by these sub-committees in relation to dogs, and without revoking the power granted them in this respect, the committee itself made certain regulations in regard to dogs. *Held*, that these regulations were valid. The delegation did not deprive the executive committee of the right to exercise the powers delegated. *Huth* v. *Clarke*, 63 L. T. Rep. N. S. 348 (Eng.).

REAL PROPERTY — ACTION AGAINST A RAILROAD FOR DAMAGES — RES ADJUDICATA. — A railroad having been constructed along a street on which plaintiff owned two lots, a few hundred feet apart, he brought action against the railroad company for damages to one of these lots by reason of the construction and operation of the railroad, and recovered a judgment. He subsequently brought another action for damages to the other lot, arising from the same cause. *Held*, that the judgment in the former suit was a bar to the action for damages to the other lot accruing prior to the former suit from the same cause, the matter being *res adjudicata*; that the cause of action was the construction and operation of the railroad; and that this was but one cause of action, irrespective of the number of pieces of property damaged. *Beronis* v. *Southern Pac. R. R. Co.*, 24 Pac. Rep. 1093 (Cal.).

REAL PROPERTY — EASEMENTS — ANCIENT LIGHTS — FUTURE DAMAGE. — Action to restrain the obstruction of ancient lights. The court granted an injunction on the following ground: That although the injury to the premises in their present use may not be so considerable as to justify the granting of an injunction, yet the probable injury in the future use to which, from the circumstances, the premises may reasonably be expected to be put, would be considerable, and so the plaintiff entitled to an injunction. *Dicker* v. *Popham et al.*, 63 L. T. Rep. N. S. 379 (Eng.).

The court follows the rule laid down in *Aynsley* v. *Glover*, 18 Eq. 551, that equity will not interfere unless the injury is such that the plaintiff would get considerable damages at law. In finding considerable damages the court follows *Moore* v. *Hall*, 3 Q. B. Div. 178, which departed from former decisions, and in assessing damages considered the probable injury to the possible future use of the premises. In this case, for the first time, as said by the court, the right of the plaintiff to relief rests mainly in damages likely to accrue in the future.

REAL PROPERTY — EMBLEMENTS — LAND SET OFF AS ALIMONY. — A growing crop of wheat sown by a husband on his land pending a suit for divorce and

alimony passes by a decree which gives the land to the wife as alimony, although the crop is not referred to in the decree. *Herron* v. *Herron*, 25 N. E. Rep. 420 (Ohio).

REAL PROPERTY — EQUITABLE EASEMENTS — PARAMOUNT CHARGE. — The defendant D. was owner in fee of a triangular piece of land subject to a restrictive covenant in favor of the defendant S. and others that it should never be built upon, which made the land almost valueless. The street in front of the land was improved under a statute that made the betterments "a charge on the premises in respect of which" the expenses for such improvements "were incurred." *Held*, that this was a charge, not upon any particular interest in the land, but upon the whole proprietorship in it; so that the land may be sold free from the restrictive covenant. *Guardians of Tendring Union* v. *Dowton*, 45 Ch. D. 583 (Eng.).

REAL PROPERTY — LEASE — CONDITION AGAINST SUBLEASE. — A lease provided that the premises "should be occupied for the sale of teas, coffees, spices, and similar goods," and that the lessee "should not sublet or permit the occupancy by any other party without the written consent of the lessors." By an oral license the lessors permitted the lessees to sublet to a person for a music store. *Held*, that this was not such a waiver of the conditions as would give the right to sublet to any one else or for any other business. *Wertheimer* v. *Hosmer*, 47 N. W. Rep. 47 (Mich.).

REAL PROPERTY — TAX SALE — NOTICE TO PERSON IN POSSESSION — REDEMPTION. — One who, without any claim of ownership or the right of possession, herds his cattle on a range of open and uncultivated land is not in possession of a quarter-section forming part of the range within the meaning of Code Iowa, § 894, requiring notice of the expiration of the time of redemption from a tax sale to be served on the person in possession of the land. *Brown* v. *Pool*, 46 N. W. Rep. 1069 (Iowa).

SALES. — Where a purchaser of personalty, under a contract by which the title is to remain in the seller until payment of the entire price, has unconditionally promised to pay the price therefor, and has taken possession of the property and used it as his own, and it is burned while in his possession before payment of the purchase-money becomes due, without any negligence on his part, he is liable for the price contracted to be paid. *Tufts* v. *Griffin*, 12 S. E. Rep. 68 (N. C.). See *Swallow* v. *Emery*, 111 Mass. 356, *contra*.

SALES — DEPOSITS OF WHEAT WITH MILLER. — The plaintiffs delivered wheat to the defendants, who were dealers in grain and conducted a warehouse and flouring-mill, and the defendants agreed to deliver to the plaintiffs on request a certain quantity of bran and flour for each bushel of wheat. Before the delivery of all the flour and bran, the warehouse of the defendants was burned without fault on their part and the flour and bran destroyed. *Held*, the transaction was a sale and not a bailment, as there was no undertaking to restore the same wheat either in its original or in an altered form, and so the defendant must pay for the wheat. *Woodward* v. *Semans*, 25 N. E. Rep. 444 (Ind.).

TRESPASS — ACCIDENTAL INJURY — NEGLIGENCE. — In the absence of negligence a man who accidently shoots another is not liable in an action of trespass. *Stanley* v. *Powell*, 39 W. R. 76 (Eng.).

An effort is made to distinguish all the old cases which appear to lay down a contrary doctrine. The American law has long been in accord with this case, and there has been little doubt that the English law would be declared the same at the first opportunity.

TRUSTS — CONFLICTING EQUITIES — PRIORITY OF NOTICE. — A solicitor received a sum of money and represented that he had invested it in a specified mortgage, whereas it was standing in his own name. Later, the solicitor deposited the mortgage deed with his banker as security for an overdrawn account. The bank, without any notice of the client's claim and before any notification by the client, notified the mortgagor. *Held*, that the solicitor was trustee of the mortgage for his client; but that the bank should not gain by preference, as the principle of *Dearle* v. *Hall*, 3 Russ. 1, did not apply to a mortgage of realty. *In re Richards*, 45 Ch. D. 589 (Eng.).

TRUSTS — ORAL TRUST IN LAND. — At common law, while a trust in land may be created by parol, there must be a valuable consideration to support the

oral trust where there is no transfer of the legal title. *Pitman* v. *Pitman*, 12 S. E. Rep. 61 (N. C.).

This case follows the rule laid down by Lord Chief Baron Gilbert, Gilbert on Uses, 270, and is a qualification of the broad statement that, in the absence of the Statute of Frauds, trusts in land may be created by parol. See *Dean* v. *Dean*, 6 Conn. 287, *contra*.

USURY — COMPOUND INTEREST. — An agreement to make interest as it matures become principal so as to bear interest, where the rate of interest charged is the highest legal rate, is usury. It amounts to compound interest. This rule does not forbid interest-bearing coupons. *Drury* v. *Wolfe*, 25 N. E. Rep. 626 (Ill.).

WRITS — FAILURE TO ATTACH A SEAL TO AN EXECUTION. — The failure to attach the seal of the court to an execution does not render it void, but voidable merely. *Warmoth* v. *Dryden*, 25 N. E. Rep. 433 (Ind.).

REVIEWS.

THE DOCTRINE OF EQUITY. A COMMENTARY ON THE LAW AS ADMINISTERED BY THE COURT OF CHANCERY. By John Adams. Eighth edition, by Robert Ralston, of the Philadelphia Bar. Philadelphia, T. & J. W. Johnson & Co., 1890. 8vo. Pages 839.

We are glad to see that this valuable work is not to be allowed to become out of date. It has been so long and so well known by lawyers as one of the very best works on the subject of equity that any extended criticism is unnecessary. The fact that it has passed through so many editions is sufficient to show the estimation in which it is held, and its popularity deserves to be long continued. The present edition is by Robert Ralston, of the Philadelphia Bar. The body of the work is unaltered, but the foot-notes have been carefully revised and re-arranged. They are very full, and contain the very latest authorities. Some idea of the number of the citations may be obtained from the fact that the table of cases occupies nearly one hundred pages. The work of the publishers has been done in their usual thorough manner, and leaves nothing to be desired. G. C.

THE LAW OF COLLATERAL INHERITANCE, LEGACY, AND SUCCESSION TAXES. By Benj. F. Dos Passos, Assistant District Attorney, New York County. L. K. Strouse & Co., New York, 1890. 8vo. Pages xxii and 328.

The method of taxation known as the "collateral inheritance tax" is not general in this country, having been adopted as yet by but nine States, and in five of these only since 1864. The tendency of legislation, however, seems to be distinctly in favor of this means of raising money, and we may expect to see it adopted in additional jurisdictions in the near future. Wherever it now exists it is a large and increasing source of revenue, and by a natural consequence the cause of much litigation.

Mr. Dos Passos' book, which is the first on this subject, is therefore timely, both because of the probability that statutes similar to those of which it treats will soon be common in the different States, and because the meaning and effect of the existing statutes is already a matter of considerable importance. It is for this latter reason that the book is